

§ 3809.570

STATE-APPROVED FINANCIAL GUARANTEE

§ 3809.570 Under what circumstances may I provide a State-approved financial guarantee?

When you provide evidence of an existing financial guarantee under State law or regulations that covers your operations, you are not required to provide a separate financial guarantee under this subpart if—

- (a) The existing financial guarantee is redeemable by the Secretary, acting by and through BLM;
- (b) It is held or approved by a State agency for the same operations covered by your notice(s) or plan(s) of operations; and
- (c) It provides at least the same amount of financial guarantee as required by this subpart.

§ 3809.571 What forms of State-approved financial guarantee are acceptable to BLM?

You may provide a State-approved financial guarantee in any of the following forms, subject to the conditions in §§ 3809.570 and 3809.574:

- (a) The kinds of individual financial guarantees specified under § 3809.555;
- (b) Participation in a State bond pool, if—
 - (1) The State agrees that, upon BLM's request, the State will use part of the pool to meet reclamation obligations on public lands; and
 - (2) The BLM State Director determines that the State bond pool provides the equivalent level of protection as that required by this subpart; or
- (c) A corporate guarantee that existed on January 20, 2001, subject to the restrictions on corporate guarantees in § 3809.574.

§ 3809.572 What happens if BLM rejects a financial instrument in my State-approved financial guarantee?

If BLM rejects a submitted financial instrument in an existing State-approved financial guarantee, BLM will notify you and the State in writing, with a complete explanation of the reasons for the rejection within 30 calendar days of BLM's receipt of the evidence of State-approved financial guarantee. You must provide BLM with a

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financial guarantee acceptable under this subpart at least equal to the amount of the rejected financial instrument.

§ 3809.573 What happens if the State makes a demand against my financial guarantee?

When the State makes a demand against your financial guarantee, thereby reducing the available balance, you must do both of the following:

- (a) Notify BLM within 15 calendar days; and
- (b) Replace or augment the financial guarantee within 30 calendar days if the available balance is insufficient to cover the remaining reclamation cost.

§ 3809.574 What happens if I have an existing corporate guarantee?

(a) If you have an existing corporate guarantee on January 20, 2001 that applies to public lands under an approved BLM and State agreement, your corporate guarantee will continue in effect. BLM will not accept any new corporate guarantees or increases to existing corporate guarantees. You may not transfer your existing corporate guarantee to another operator.

(b) If the State revises existing corporate guarantee criteria or requirements that apply to a corporate guarantee existing on January 20, 2001, the BLM State Director will review the revisions to ensure that adequate financial coverage continues. If the BLM State Director determines it is in the public interest to do so, the State Director may terminate a revised corporate guarantee and require an acceptable replacement financial guarantee after due notice and a reasonable time to obtain a replacement.

MODIFICATION OR REPLACEMENT OF A FINANCIAL GUARANTEE

§ 3809.580 What happens if I modify my notice or approved plan of operations?

(a) If you modify a notice or an approved plan of operations under § 3809.331 or § 3809.431 respectively, and your estimated reclamation cost increases, you must increase the amount of the financial guarantee to cover any

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estimated additional cost of reclamation and long-term treatment in compliance with § 3809.552.

(b) If you modify a notice or an approved plan of operations under § 3809.331 or § 3809.431 respectively, and your estimated reclamation cost decreases, you may request BLM decrease the amount of the financial guarantee for your operations.

§ 3809.581 Will BLM accept a replacement financial instrument?

(a) Yes, if you or a new operator have an approved financial guarantee, you may request BLM to accept a replacement financial instrument at any time after the approval of an initial instrument. BLM will review the offered instrument for adequacy and may reject any offered instrument, but will do so by a decision in writing, with a complete explanation of the reasons for the rejection, within 30 calendar days of the offering.

(b) A surety is not released from an obligation that accrued while the surety bond was in effect unless the replacement financial guarantee covers such obligations to BLM's satisfaction.

§ 3809.582 How long must I maintain my financial guarantee?

You must maintain your financial guarantee until you or a new operator replace it with another adequate financial guarantee, subject to BLM's written concurrence, or until BLM releases the requirement to maintain your financial guarantee after you have completed reclamation of your operation according to the requirements of § 3809.320 (for notices), including any measures identified as the result of consultation with BLM under § 3809.313, or § 3809.420 (for plans of operations).

RELEASE OF FINANCIAL GUARANTEE

§ 3809.590 When will BLM release or reduce the financial guarantee for my notice or plan of operations?

(a) When you (the mining claimant or operator) have completed all or any portion of the reclamation of your operations in accordance with your notice or approved plan of operations, you may notify BLM that the reclamation has occurred and request a reduction in the financial guarantee or BLM

approval of the adequacy of the reclamation, or both.

(b) BLM will then promptly inspect the reclaimed area. We encourage you to accompany the BLM inspector.

(c) For your plan of operations, BLM will either post in the local BLM office or publish notice of final financial guarantee release in a local newspaper of general circulation and accept comments for 30 calendar days. Subsequently, BLM will notify you, in writing, whether you may reduce the financial guarantee under § 3809.591, or the reclamation is acceptable, or both.

§ 3809.591 What are the limitations on the amount by which BLM may reduce my financial guarantee?

(a) This section applies to your financial guarantee, but not to any funding mechanism established under § 3809.552(c) to pay for long-term treatment of effluent or site maintenance. Calculation of bond percentages in paragraphs (b) and (c) of this section does not include any funds held in that kind of funding mechanism.

(b) BLM may release up to 60 percent of your financial guarantee for a portion of your project area when BLM determines that you have successfully completed backfilling; regrading; establishment of drainage control; and stabilization and detoxification of leaching solutions, heaps, tailings, and similar facilities on that portion of the project area.

(c) BLM may release the remainder of your financial guarantee for the same portion of the project area when—

(1) BLM determines that you have successfully completed reclamation, including revegetating the area disturbed by operations; and

(2) Any effluent discharged from the area has met applicable effluent limitations and water quality standards for one year without needing additional treatment, or you have established a funding mechanism under § 3809.552(c) to pay for long-term treatment, and any effluent discharged from the area has met applicable effluent limitations and water quality standards for one year with or without treatment.